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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/824,937	04/03/2001	Lori Greiner	13345.36US01	1540
23552	7590	04/14/2004	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			CASTELLANO, STEPHEN J	
			ART UNIT	PAPER NUMBER

3727

DATE MAILED: 04/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/824,937	<b>Applicant(s)</b> GREINER	
	<b>Examiner</b> Stephen J. Castellano	<b>Art Unit</b> 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 December 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 15-19 and 21-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-19 and 21-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)<br>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)<br>3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____.<br>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)<br>6) <input type="checkbox"/> Other: _____. |
|---|--|

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15-18, 21-23, 26-31 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimura in view of Barnes et al. (Barnes) and Tupper.

Kimura discloses a decorative container displaying items in a hollow region comprising an inner container positioned within an outer container thereby defining a hollow region there between, the outer container is transparent, a removable member (24) allows access to the hollow region. Kimura discloses the container except for the decorative lid. Barnes teaches a decorative lid removably mounted in the upper opening of a decorative container, the lid defining a hollow cavity and being transparent, the lid comprising a removable access member providing access to the hollow cavity. It would have been obvious to add a lid in order to close the container and seal the contents from contamination. Kimura in view of Barnes discloses the invention except for lid removable access member being replaceable. Tupper teaches the lid access member (plate A) which is replaceable and removable by groove 25 that is removably and replaceably engaged upon flange 23 of the lid. It would have been obvious to add the groove and flange to Barnes' lid access member and lid, respectively, in order to change the contents and store a refreshed supply of items in the hollow lid cavity.

For claims 17 and 30, it would have been obvious to make the transparent shell dome shaped as a matter of design choice in selecting a well known shape.

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For claims 18 and 31, it would have been obvious to provide a two centimeter distance between the base portion and shell as a matter of design choice in sizing and shaping the container.

Claims 19, 24, 25 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimura in view of Barnes, Tupper and Yellin.

The combination of Kimura, Barnes and Tupper is as taught in the above rejection. The combination discloses the invention except for the plurality of dividers. Yellin teaches a plurality of removable dividers (76), one shown in Fig. 6. It would have been obvious to add a plurality of dividers to the hollow region of Kimura in order to segregate subregions of the hollow region and to keep the contents of one subregion from becoming mixed with contents of another subregion. .

Claims 15-18, 21, 22, 26-31 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gallegos in view of Barnes et al. (Barnes) and Tupper.

Gallegos discloses a decorative container displaying items in a hollow region comprising an inner container positioned within an outer container thereby defining a hollow region there between, the outer container is transparent, a removable member (23) allows access to the hollow region. Gallegos discloses the container except for the decorative lid. Barnes teaches a decorative lid removably mounted upon in the upper opening of a decorative container, the lid defining a hollow cavity and being transparent, the lid comprising a removable access member providing access to the hollow cavity. It would have been obvious to add a lid in order to close the container and seal the contents from contamination. Gallegos in view of Barnes discloses the invention except for lid removable access member being replaceable. Tupper teaches the a lid

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access member (plate A) which is replaceable and removable by groove 25 which is removably and replaceably engaged upon flange 23 of the lid. It would have been obvious to add the groove and flange to Barnes' lid access member and lid, respectively, in order to change the contents and store a refreshed supply of items in the hollow lid cavity.

Claims 19, 24, 25 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gallegos in view of Barnes, Tupper and Yellin.

The combination of Gallegos, Barnes and Tupper is as taught in the above rejection. The combination discloses the invention except for the plurality of dividers. Yellin teaches a plurality of removable dividers (76), one shown in Fig. 6. It would have been obvious to add a plurality of dividers to the hollow region of Kimura in order to segregate subregions of the hollow region and to keep the contents of one subregion from becoming mixed with contents of another subregion.

Applicant's arguments filed December 24, 2004 have been fully considered but they are not persuasive.

Applicant states that Kimura, a display or decorative vessel, is non-analogous with Barnes that displays the inlay material 11 of an omelet. Kimura and Barnes are both double walled vessels. Barnes is pertinent to the particular problem solved of providing a transparent lid having a sealed chamber so that the contents of the lid can be viewed. Barnes and Kimura are analogous.

Applicant also mentions that the waste can of Tupper is non-analogous. Tupper is concerned with the particular problem solved of providing a removable and resealable closure for the lid chamber. Barnes, Tupper and Barnes are analogous.

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The motivation to combine the various references are clearly stated in the first action, as well as, are clearly repeated in this action and repeated by applicant in the remarks in response to the first action.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Stephen J. Castellano  
Primary Examiner  
Art Unit 3727

sjc